

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.18353 OF 2005

Dt:09.09.2005

Between:

Union of India

Rep.by General Manager

S.C.Railway, Rail Nilayam

Secunderabad 500 571 and others ... PETITIONER

AND

B.Tulasi Ram, S/o.B.Subbarayulu

15-53, Panchalinagar

Renigunta 517 520 ... RESPONDENT

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

-

WRIT PETITION No.18353 OF 2005

ORDER: *(per the Hon'ble Smt.Justice T.Meena Kumari)*

This Writ Petition is filed by the petitioner-Railways aggrieved by the Order dated

16.02.2005 in O.A.No.613 of 2003 on the file of the Central Administrative Tribunal, Hyderabad.

The above mentioned O.A. was filed by the respondent-applicant to declare the proceedings of the third petitioner dated 19.03.2002 terminating his services from the post of LR Porter and the Order of the second petitioner dated 24.03.2003 rejecting his appeal as illegal and arbitrary and to reinstate him with all attendant benefits including arrears of salary etc.

It is the case of the respondent-applicant before the Tribunal that he belongs to Scheduled Tribe Community and possesses the educational qualification of 10th class failed. He appeared for selections seeking recruitment in Group-D post of Commercial/Luggage Porter during the year 1995-1996, passed the examination and was appointed as LR Porter in Yatalur of Guntakal Division in the existing vacancy. Later, he was transferred to Renigunta from Yatalur vide Office Order dated 19.01.1997. While so, he was subjected to medical examination by the Medical Superintendent, Renigunta, who, in turn, referred him to the Railway Hospital, Guntakal on 06.04.2000 for examination and advise regarding colour vision and from there, for further examination, he was referred to the Railway Hospital, Lalaguda, Secunderabad. They, in turn, referred him to Sarojini Devi Eye Hospital for expert opinion. On due examination, it was found by the Hospital that the respondent-applicant was suffering from colour vision and is blind for all primary colours viz., green, red and blue. While so, the Railway Hospital, Guntakal once again directed the respondent-applicant to appear for medical examination in the Railway Hospital, Lalaguda. The CMS, Guntakal vide his letter dated 09.11.2000 declared that the respondent-applicant is unfit for all classes under para 512 (i) and (ii) sub-note VI of IRMM. However, he was communicated a note issued by the APO, Guntakal dated 17.02.2001 stating that he was declared medically unfit under para 512(2) sub note (ii) of IRMM and that action was on hand to create a supernumerary post in his favour under serial circular No.138/99. The Senior DPO, Guntakal issued memorandum dated 14.06.2001, creating special supernumerary posts in favour of the employees those who were declared as medically unfit. The applicant's name was figured at serial No.4 and the date of creation of the post was with effect from 09.11.2000. Though the respondent-applicant was abruptly stopped from attending to duties with effect from 9.11.2000, he was once again admitted to duties on 13.2.2001. No order had been passed preventing him from attending to duties with

effect from 9.11.2000. While so, the Personnel Branch vide proceedings dated 19.2.2002, called the medically decategorised staff for screening scheduled to be held on 27.2.2002. Accordingly, the respondent-applicant attended the screening on the said date. To his surprise, the 3rd petitioner issued proceedings dated 19.3.2002 terminating his services with immediate effect by a non-speaking order simply stating that he was declared medically unfit for all classes under para 512 (2) sub note (ii) of IRMM volume I and that malingering was established. It is his case that no disciplinary proceedings were initiated nor any opportunity was afforded to him by issuing a show cause notice before terminating his services. Aggrieved by the same, the above O.A. was filed.

The petitioner-Railways contested the matter by way of filing a reply statement contending that the respondent-applicant was appointed as regular LR Porter and posted to work under the Station Superintendent, Yathalur vide letter dated 02.05.1996. Thereafter, he was transferred on mutual exchange basis from Yathalur to Renigunta. The employees who are working in safety categories in Operating Department would be subjected to periodical medical examination once in four years. Therefore, the respondent-applicant was directed to undergo periodical medical examination and during the examination at Railway Hospital, Guntakal, he failed in Ishihara and hence, his case was referred to the Medical Director, Lalaguda. The Medical Director, Lalaguda had examined him and again referred him to Sarojini Devi Eye Hospital, Hyderabad where results were 'colour design testing with Ishihara showed blind for all primary colours'. The Chief Medical Superintendent, Railway Hospital, Lalaguda had examined his case and opined as defective colour perception for Ishihara. An Ophthalmic Medical Board was constituted on 25.07.2000 at Railway Hospital, Lalaguda and it was of the opinion that the applicant was malingering for Ishihara colour plate. While approving the Ophthalmic Medical Board's finding, the Chief Medical Director, Secunderabad, had advised, vide letter dated 19.10.2000 that the applicant-LR Porter was unfit for all classes. Therefore, in terms of Serial Circular No.138/99, special supernumerary post has been created in favour of the applicant-LR porter on his medical decategorisation in all Classes vide letter dated 7.2.2001. His wages were allowed from 09.11.2000. His name was kept at serial No.4 of Memorandum dated 14.06.2001. Thereafter, he was directed to appear before the Screening Committee on 27.02.2002 at 10.00 hours in Divisional Railway Manager's Office, Guntakal vide

letter dated 19.02.2002. The applicant, though reported to the office on 27.02.2002, failed to appear before the Screening Committee. On verification of the records, the Screening Committee had decided that the employee was unfit for all Classes and therefore, the question of offering him alternative appointment does not arise. According to the petitioner-Railways, the applicant was unfit for all Classes under para 512(2) sub-note (II) of IRMM and in Railway Board's letter dated 31.07.2001, it was decided that "if a person has been declared a malinger in terms of note (II) he will not be entitled to the benefit of the scheme framed pursuant to Section 47(I) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (for short '**the Act**') for absorption in alternative employment of medically decategorised Railway servants". Hence, the services of the applicant were terminated on medical decategorisation in all Classes vide Memo dated 19.03.2002. On appeal, the Chief Personnel Officer, Secunderabad had replied vide letter dated 24.03.2003 that in terms of amended provisions to IRMM circulated vide letter dated 31.07.2001, a malinger was not entitled to the provisions of the Act for absorption in an alternative employment of medically decategorised Railway servants.

The Tribunal after hearing both the sides and after going through the facts of the case, allowed the O.A. observing that the summary termination of the services of the respondent-applicant without affording him an opportunity to defend himself not only violates principles of natural justice but also a serious violation of canons of decency, decorum and known principles of justice and accordingly, quashed the proceedings dated 19.03.2002 terminating the services of the respondent-applicant and the order dated 24.03.2003 rejecting his appeal and directed the petitioner-Railways to reinstate him within a period of two months from the date of receipt of a copy of the order and to pay all the consequential benefits to him within a period of three months from the date of receipt of a copy of that order.

Heard the learned counsel for both the sides.

The fact remains that even after the applicant was declared medically unfit for all classes, he was continued in the supernumerary post and his wages were paid from 09.11.2000. The Railway Board's letter is dated 31.07.2001, by which time, the applicant has already been absorbed in the supernumerary post and hence, it is to be held that the terms of the said letter cannot be applied in the case of the applicant who is already in the alternative post from 09.11.2000.

For the aforesaid reasons, we are in complete agreement with the Order passed by the Tribunal. The writ petition is devoid of merits and the same is accordingly dismissed.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 09.09.2005

bsv/lvl